

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2703 of 2018

1.Perumal
2.Chinnakkannu
3.Pachaiammal
4.Ramachandran
5.Suresh
6.Sumathi

... Appellants/Claimants

Vs.

1.N.Gomathi

2.The Branch Manager,
M/s.United India Assurance Co. Ltd.,
No.50-A, Pallivasal Street,
Perambalur 621 212,
Perambalur District.

...Respondents/ Respondents

(R1 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 25.07.2018 made in M.C.O.P.No.211 of 2016 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

For Appellants : Mr.Kamadevan.S
For R2 : Mr.T.Ravichandran
For R1 : Exparte

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 25.07.2018 made in M.C.O.P.No.211 of 2016 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur.

2.The appellants are the claimants in M.C.O.P.No.211 of 2016 on the file of the Principal District Court, (Motor Accident Claims Tribunal), Perambalur. They filed the said claim petition, claiming a sum of Rs.30,00,000/- as compensation for the death of one Sundarrasu, son of the appellants 1 and 2 and brother of the appellants 3 to 6, who died in the accident that took place on 25.10.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the respondents 1 and 2 are liable to pay compensation to the appellants as the deceased was the driver of the car belonging to the 1st respondent, insured with the 2nd respondent and awarded a sum of Rs.6,56,000/- as compensation to the appellants and directed the 2nd respondent-Insurance Company to pay the same to the appellants on behalf of the 1st respondent, owner of the car.

4.Not being satisfied with the compensation granted by the award dated 25.07.2018 made in M.C.O.P.No.211 of 2016, the appellants have come out with this appeal.

5.The learned counsel appearing for the appellants contended that the deceased was working as a driver. The Tribunal erred in fixing Rs.6,000/- per month as notional income. The Tribunal ought to have fixed Rs.15,000/- as notional income. The deceased was 33 years at the time of accident. The Tribunal has not granted any addition for future prospects and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent contended that the appellants failed to prove that the deceased was working as a driver and earning Rs.15,000/- as monthly income. In the absence of any proof, the Tribunal has fixed the notional income at Rs.6,000/- per month. The sum of Rs.50,000/- granted towards loss of love and affection is excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

8.From the materials on record, it is seen that the accident took place on 25.10.2015. The appellants in the claim petition have stated that the deceased was working as a driver and was earning Rs.15,000/- per month. The 1st respondent, owner of the car who was examined as R.W.1, deposed about the avocation of the deceased as driver and also the salary earned by him. The Tribunal did not accept the evidence of R.W.1 on the ground that no document was produced with regard to salary of the deceased and that driving license of the deceased was not produced. These

reasons are not valid reason for fixing meager amount of Rs.6,000/- as notional income. The 2nd respondent has not let in any evidence to show that the deceased was not working as a driver. In such circumstances, it will be reasonable to fix the sum of Rs.9,000/- per month as notional income for the deceased, enhancing the same from Rs.6,000/- per month fixed by the Tribunal. The deceased was aged 33 years at the time of accident and unmarried. The appellants are entitled to 40% enhancement for future prospects. After adding 40% to Rs.9,000/-, 50% has to be deducted towards personal expenses. By applying the multiplier of '16', the amounts awarded by the Tribunal under the head of loss of income is modified as follows:

$$([Rs.9,000 + Rs.3,600(40\% \text{ of } 9000)] - 50\%) \times 12 \times 16 = Rs.12,09,600/-$$

The compensation awarded by the Tribunal under all other heads are just compensation and are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	5,76,000	12,09,600	enhanced
2.	Loss of love and affection	50,000	50,000	confirmed
3.	Funeral expenses	15,000	15,000	confirmed
4.	Loss of estate	15,000	15,000	confirmed
	Total	Rs.6,56,000/-	12,89,600	Enhanced by Rs.6,33,600/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,56,000/- is hereby enhanced to Rs.12,89,600/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw their share of the enhanced award amount

along with interest and costs, as per the ratio of apportionment fixed by the Tribunal, less the amount if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.
gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
(Motor Accident Claims Tribunal),
Perambalur.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.S.Kamadevan, Advocate, SR.No.86877

+1cc to M/s.T.Ravichandran, Advocate, SR.No.87328

C.M.A.No.2703 of 2018

Kak (28/05/2019)

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